

The Supreme Court and Trump's anti-Muslim executive orders

Tom Carter
1 July 2017

The Supreme Court's decision on Monday permitting Donald Trump's anti-Muslim ban to go into effect is one of the most significant cases in the history of the institution. After lower federal judges had blocked Trump's flagrantly discriminatory executive orders from being enforced, the Supreme Court intervened to hand Trump a victory.

The written opinion of the court is significant not because it is distinguished by brilliant legal reasoning or profound affirmations of democratic principle. It is a dull, tepid document of a mere 13 pages. A political compromise was obviously reached and the legal "reasoning" of the decision is just a crude, half-hearted shuffle towards the pre-determined outcome.

Nothing recognizable as a democratic sentiment is expressed anywhere in the opinion. It is simply announced that "the balance tips in favor of the Government's compelling need to provide for the Nation's security."

The Supreme Court's decision is a signal that, after a protracted twilight, the sun is setting on anything that might be called American democracy. The historical association between the US political establishment and a certain democratic political culture, institutions and traditions, inherited from the American Revolution and Civil War, has long since passed over the horizon, no longer a reality.

Donald Trump, loud and ugly, proclaims the new reality. With his appeals to bigotry and prejudice, Trump expresses the rot at the heart of the American social system. Everything sick about American capitalism—including the criminality, ignorance, rapacity, narcissism and kleptomania of its ruling class—has been puked up in the form of this vulgar imbecile. Trump's rise heralds a new era of war, repression, social counter-revolution and class struggle.

The comparison of Monday's decision with the

notorious 1944 Supreme Court decision in *Korematsu v. United States* is entirely warranted. In that case, a majority of the Supreme Court justices, on the grounds of military expedience, affirmed the legality of exclusion orders, internment camps and curfews for people of Japanese ancestry. Once again, the Supreme Court is authorizing discrimination based on nationality.

But unlike *Korematsu*, there are no dissenting justices today, crying out against the injustices being perpetrated against a persecuted minority. The *Korematsu* decision, at least, featured the famous dissent of Justice Frank Murphy, which concluded: "I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting, but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States."

Who is dissenting today? In 2017, the only dissent is from the Supreme Court's far right wing. The controversy is between six justices who would allow the anti-Muslim ban to go into effect except for those with "bona fide connections" to the United States, and three justices who would allow it to go into effect without restrictions.

It is not clear whether the anti-Muslim executive orders are worse with or without the arbitrary caveat about "bona fide connections," which was endorsed by the court's so-called liberal wing. This caveat grants even more capricious authority to Trump's immigration officials. Will a penniless, desperate Syrian refugee with extended family in Los Angeles be deemed to have "bona fide connections?" Will a wealthy businessman with associations on Wall Street receive the same treatment?

The Supreme Court's decision is not based on law, but on lies and prejudice. According to data gathered by Professor Charles Kurzman of the University of North Carolina, exactly zero Muslim extremists who conducted

terrorist attacks inside the United States since 2001 came from the countries targeted by the executive order.

While the media prefers to use the term “travel ban,” opponents as well as supporters of Trump’s presidential decrees recognize that they are motivated by anti-Muslim bigotry. During his presidential campaign, Trump declared that he would impose a “total and complete shutdown of Muslims entering the United States,” frequently returning to the theme of “extreme vetting” for Muslims at his rallies. Trump adviser and former New York City Mayor Rudy Giuliani has boasted in public that he was consulted about drafting an instrument for persecuting Muslims that would survive legal scrutiny.

Large protests greeted the announcement of the ban in January, and the clear majority of Americans oppose the anti-Muslim executive orders. At these demonstrations, some of the best placards were those that read, “First they came for the Muslims.” Many who participated in these protests expressed an understanding that the anti-Muslim ban is more than an attack on one particular minority. It represents an attack on the fundamental democratic rights as a whole, an attempt to divide and conquer, and a precedent for future repression.

The ultimate target of the apparatus of repression is the working class, the great bulk of the population, excluded from political life, increasingly angry and opposed to the politics of oligarchy and wealth.

Steve Bannon and Stephen Miller, the fascistic Trump advisers who drafted the anti-Muslim executive orders, have a method. Like the reactionaries of the last century, they are deliberately churning up backwardness, obscurantism and prejudice, which they are seeking to channel in a reactionary political direction. Trump himself, according to a 1990 article in *Vanity Fair*, used to keep a book of Hitler’s speeches in a cabinet by his bedside.

America’s “left-wing” and “progressive” commentators, who are collectively in denial about the depth of the crisis, are preaching complacency in response to Monday’s decision. Generally aligned with the Democratic Party, these individuals are attempting to conceal the shameful capitulation of the so-called “liberal” wing of the Supreme Court, including Obama appointees Sonia Sotomayor and Elena Kagan.

The day after the travel ban went into full effect, the *New York Times*, the mouthpiece of the Democratic Party and the CIA, buried the story, devoting its lead article to the media uproar over Trump’s tweets attacking MSNBC hosts Mika Brzezinski and Joe Scarborough.

These are the same social layers who claim every other year that the election of Democrats is necessary to turn the Supreme Court to the left. Fixated on identity politics and blind to social reality, they gushed enthusiastically in 2009 about the appointment of “the first Hispanic and the third woman to serve on the Supreme Court,” as one *New York Times* article began. Faced with Monday’s unanimous decision in Trump’s favor, these types shrug their shoulders and make excuses.

The Democratic Party itself, completely preoccupied with its reactionary anti-Russia campaign, has no interest in encouraging popular opposition to Trump’s anti-Muslim executive orders or his persecution of immigrants.

Monday’s Supreme Court decision rests on decades of uninterrupted attacks on democratic rights and the rule of law, continuing through both Democratic and Republican administrations. In particular, the decision was made possible by a decade-and-a-half of the bipartisan “war on terror,” with its state-sanctioned assassinations, torture, renditions, dictatorial presidential powers, states of emergency, military commissions, militarized police, official impunity, city-wide lockdowns, domestic spying, state secrets, persecutions of whistleblowers and flag-waving xenophobia. The same period has witnessed a social counterrevolution within the United States, sharply increasing social inequality, and murderous rampages by the American military abroad.

Sharp conclusions must be drawn from the Supreme Court’s decision on Monday. Ours is not an epoch for half-measures or hazy conceptions. Those who are protesting against Trump’s anti-Muslim executive orders confront more than just one billionaire and his gang of fascistic advisers. They confront the entire rotten political establishment, the capitalist ruling class and their servants. The growing insurgency against the Trump regime must merge the struggles against repression, inequality and imperialist war into a mass political movement, independent of both the Democrats and Republicans, against the whole diseased world social, political and economic system.



To contact the WSWS and the Socialist Equality Party visit:

[wsws.org/contact](https://www.wsws.org/contact)